

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

IN RE:

CAMPBELLTON-GRACEVILLE
HOSPITAL CORPORATION,

CASE NO.: 17-40185-KKS
CHAPTER: 11

Debtor.

/

**SUPPLEMENTAL ORDER: FINDINGS OF FACT AND
CONCLUSIONS OF LAW IN SUPPORT OF *AMENDED ORDER
GRANTING LIQUIDATING TRUSTEE'S EXPEDITED MOTION TO
EXTEND DEADLINE TO FILE ADVERSARY PROCEEDINGS, NUNC
PRO TUNC TO APRIL 17, 2019 (DOC. 980) (DOC.1026)***

THIS CASE came before the Court for an expedited evidentiary hearing on April 17, 2019 ("Evidentiary Hearing"), upon the *Liquidating Trustee's Expedited Motion to Extend Deadline to File Adversary Proceedings* and corresponding statement of undisputed facts and exhibits ("Motion," Doc. 980),¹ filed by Liquidating Trustee, Marshall Glade ("Liquidating Trustee").² No creditor or party in interest filed a response to the Motion.

¹ Docs. 989 and 990.

² See Campbellton-Graceville Hospital Liquidating Trust, created pursuant to the order confirming the *Second Amended Joint Chapter 11 Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code* ("Confirmation Order," Doc. 882; "Plan," Doc. 812) and *Liquidating Trust Agreement* dated November 30, 2018 ("Liquidating Trust," Doc. 914).

Based on evidence and oral argument presented at the Evidentiary Hearing, the Court granted the Motion and reserved jurisdiction to enter this Supplemental Order.³

FINDINGS OF FACT

The evidence, comprised of testimony in declarations and exhibits admitted into evidence, demonstrates:

a. the extensive and diligent efforts undertaken in this case since its inception to investigate and uncover the fraudulent laboratory billing scheme (the “Laboratory Program”) that was operated out of the Campbellton-Graceville Hospital (the “Hospital”) and the claims and causes of action arising out of the Laboratory Program that may be pursued by the Liquidating Trustee;

b. the Laboratory Program resulted in the Hospital, a 25 bed critical access hospital located in Graceville, Florida—a city with a population of less than 2,500 people—billing in excess of \$300 million to third-party payors during an approximate 10-month period, third-party payors remitting in excess of \$130 million to the Hospital, and most, if

³ Doc. 1026.

not all, of the \$130 million being funneled out of the Hospital to the various layers of participants in the Laboratory Program;

c. the scope of the Laboratory Program is far-ranging with participants literally scattered across the country;

d. the investigation into the Laboratory Program and the causes of action arising out of it has been obscured and hindered by the actions of certain third parties involved either directly or indirectly in the Laboratory Program;

e. the investigation into the Laboratory Program and the causes of action arising out of it is ongoing by the Liquidating Trust's professionals utilizing many methods, including by interview, review and receipt of documents from third parties, and the use of 2004 examinations and subpoenas;

f. notwithstanding the pre- and post-confirmation due diligence by the bankruptcy estate and now the Liquidating Trust's professionals, like peeling away the layers of an onion, new details of the Laboratory Program and potential claims and causes of action continue to be uncovered, including the events that took place, the parties involved and

the transfer of monies received by the Hospital and paid to subsequent transferees;

g. by way of example, because billing records were not provided by the Hospital's billing service, Empower H.I.S. LLC or third-party payors, the bankruptcy estate's and now the Liquidating Trust's professionals were forced to subpoena billing records through a series of clearinghouses, which records revealed a significant number of healthcare providers whose NPI numbers were used to bill third-party payors through the Hospital for lab tests that were improperly billed at inflated rates or billed for lab tests that were not done at all;

h. as a result, beginning in February 2019, the Liquidating Trustee served demand letters and hundreds of subpoenas on these healthcare providers, and discovery remains ongoing;

i. by way of further example, based on recent depositions the Liquidating Trustee has uncovered information revealing additional layers of participation in the Laboratory Program, including middle-men solicitors that solicited (i) reference laboratories to participate in the Laboratory Program, and (ii) healthcare providers and facilities such as sober homes and drug rehab and treatment facilities to provide urine

samples for testing to create the pretense of a legitimate laboratory program through which to bill third-party payors;

j. the Liquidating Trustee has commenced a first round of adversary proceedings against certain third-party reference laboratories identified by the bankruptcy estate's financial advisors based on initial tracing of funds flowing out of the Hospital in the first instance, and where the Liquidating Trustee has determined he has a sufficient factual basis to bring these proceedings;

k. based upon uncovered information, the Liquidating Trustee is in the process of scheduling depositions of witnesses across the United States and is awaiting receipt of documents and information deemed critical by the Liquidating Trustee to the continued investigation that will reveal potential targets and claims and causes of action against third parties;

l. the Liquidating Trustee will require additional time to continue his investigation, including reviewing documents and information and examining certain third parties who were involved at various levels in the Laboratory Program, so that he may bring claims and causes of action against additional third parties that are implicated;

m. the Liquidating Trustee will require additional time, as a result of the requirement under this Court's First Round Procedures Order and Second Round Procedures Order ("Procedures Orders"),⁴ to complete mediations on the first round of adversary proceedings within 90 days, and to also attempt to negotiate, mediate and settle with newly discovered litigation targets prior to initiating additional adversary proceedings.⁵

CONCLUSIONS OF LAW

The Liquidating Trustee has shown cause, as required under Bankruptcy Rule 9006(b), to extend the statute of limitations deadline for filing adversary proceedings seeking relief under 11 U.S.C. § 546.⁶ The Liquidating Trustee has also introduced ample evidence to prove that the limitations period for nonbankruptcy claims and causes of action

⁴ "First Round Procedures Order" and "Second Round Procedures Order" are defined terms in this case. Docs. 950, 951, 976 and 977.

⁵ This recitation of facts is adopted from a proposed order submitted by counsel for the Liquidating Trustee. The facts emanate from: *Declaration of Frank P. Terzo in Support of Liquidating Trustee's Expedited Motion to Extend Deadline to File Adversary Proceedings* (Doc. 990); *Declaration of Marshall Glade in Support of Liquidating Trustee's Expedited Motion to Extend Deadline to File Adversary Proceedings* (Doc. 990); and *Declaration of Melissa Scott in Support of Liquidating Trustee's Expedited Motion to Extend Deadline to File Adversary Proceedings* (Doc. 990) (collectively, the "Declarations.") The Court finds the testimony in the Declarations and proffered at the Evidentiary Hearing to be credible in all respects.

⁶ Fed. R. Bankr. P. 9006(b). The Federal Rules of Bankruptcy Procedure are hereinafter referred to as "Rule," or if plural "Rules."

under 11 U.S.C. § 108(a) has been suspended during this case. Authority exists to support extending the Liquidating Trustee's time to file adversary proceedings to pursue § 108(a) nonbankruptcy causes of action, but because the time for filing such actions has been equitably tolled, no such ruling is necessary.

ANALYSIS

A. The deadline for the Liquidating Trustee to bring causes of action under 11 U.S.C. § 546 is extended through May 6, 2020.

The Liquidating Trustee is entitled to an extension of the period under 11 U.S.C. § 546 to bring adversary proceedings asserting bankruptcy causes of action through May 6, 2020. Section 546(a) provides:

- (a) An action or proceeding under section 544, 545, 547, 548, or 553 of this title may not be commenced after the earlier of—
 - (1) the later of—
 - (A) 2 years after the entry of the order for relief; or
 - (B) 1 year after the appointment or election of the first trustee under section 702, 1104, 1163, 1202, or 1302 of this title if such appointment or such election occurs before the expiration of the period specified in subparagraph (A); or
 - (2) the time the case is closed or dismissed.⁷

⁷ 11 U.S.C. § 546(a) (2006).

Bankruptcy Courts have authority to enlarge the two-year statute of limitations period under Section 546 for cause, pursuant to Rule 9006(b) and binding Eleventh Circuit precedent in *In re International Administrative Services, Inc.*⁸ Under the facts and circumstances of this case, cause exists to extend the statute of limitations deadline under 11 U.S.C. § 546 through at least May 6, 2020.⁹

B. The Liquidating Trustee has proved that the deadline to bring causes of action under § 108(a) has been suspended and thus equitably tolled.

The Liquidating Trustee requested an extension of time to file nonbankruptcy causes of action as adversary proceedings under 11 U.S.C. § 108(a) and Rule 7001. At the conclusion of the hearing the Court orally granted this relief and then entered an order so stating.¹⁰ This ruling was unnecessary because the facts and evidence show that the limitations period under Section 108(a) has been suspended during this case.¹¹

⁸ *In re Int'l Admin. Servs., Inc.*, 408 F.3d 689 (11th Cir. 2005).

⁹ But for this ruling, the statute of limitations to bring certain claims and causes of action pursuant to 11 U.S.C. § 546(a) would have run two years after the May 5, 2017 order for relief, extended by operation of Fed. R. Bankr. P. 9006(a)(1) to the first day that was not a Saturday, Sunday, or legal holiday. *See In re Pugh*, 158 F.3d 530 (11th Cir. 1998).

¹⁰ Docs. 1004 and 1024.

¹¹ By the Motion the Liquidating Trustee sought to extend the time to file actions under Sections 546 and 108(a) through May 6, 2020; that request is granted for § 546 claims. For

Section 108(a)(1) provides:

- (a) If applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period within which the debtor may commence an action, and such period has not expired before the date of the filing of the petition, the trustee may commence such action only before the later of—
- (1) the end of such period, including any *suspension* of such period occurring on or after the commencement of the case¹²

In addition to the facts recited above, as to suspension of the limitations period for § 108 actions the evidence shows:

- i. the Liquidating Trustee and the pre-and-post confirmation professionals in the case have acted in good faith and with due diligence in investigating the Laboratory Program and potential claims and causes of action and in filing the adversary proceedings;
- ii. any delay in completing the investigation of the Laboratory Program and claims and causes of action, and bringing claims and causes of action, is:

purposes of this ruling the Court finds that the limitations period for pursuing § 108(a) claims has been suspended such that it is appropriate to allow the Liquidating Trustee through and including May 6, 2020 within which to file actions on such claims.

¹² 11 U.S.C. § 108(a)(1) (2005) (emphasis added).

A. due to the obfuscation of the Laboratory Program, the actions of certain third parties that have delayed the Liquidating Trustee's investigation into the Laboratory Program (including hindering efforts to obtain certain documents and information) and the bankruptcy case (including delaying confirmation as a result of tactical maneuvers employed by certain of the litigation targets); and

B. not within the reasonable control of the Liquidating Trustee, who with his professionals has undertaken significant and diligent efforts to discover and uncover the Laboratory Program.

iii. the suspension under Section 108(a) is appropriate under the circumstances. It will permit the Liquidating Trustee to continue his investigation and bring the claims and causes of action he deems appropriate and will not negatively impact the judicial proceedings, especially considering the first round of adversary proceedings that have already been filed and are

subject to mandatory mediation pursuant to the Procedures Orders; and

iv. there is no danger that the suspension will prejudice the Liquidating Trust or its beneficiaries, who stand only to benefit from the additional time afforded to the Liquidating Trustee to pursue claims and causes of action and outweighs any prejudice to third parties.

In *American Pipe & Construction Co. v. Utah*, the Supreme Court equated tolling with suspending the applicable statute of limitations, stating “in cases where the plaintiff has refrained from commencing suit during the period of limitation because of inducement by the defendant . . . or because of fraudulent concealment, this Court has not hesitated to find the statutory period tolled or suspended by the conduct of the defendant.”¹³ In *CTS Corp. v. Waldburger*¹⁴ the Supreme Court described equitable tolling as a doctrine that “pauses the running of, or ‘tolls’ a statute of limitations when a litigant has pursued his rights diligently

¹³ *American Pipe & Constr. Co. v. Utah*, 414 U.S. 538, 559 (1974).

¹⁴ *CTS Corp. v. Waldburger*, 573 U.S. 1, 9 (2014).

but some extraordinary circumstance prevents him from bringing a timely action.”¹⁵

In determining whether a federal statute was a “tolling” statute as opposed to a “grace period” statute, in *Artis v. District of Columbia* the Supreme Court reasoned that a tolling statute suspends the statute of limitations while a “grace period statute” permits the statute of limitations to run while the claim is pending in another forum.¹⁶ Like the federal statute at issue in *Artis*, 11 U.S.C. § 108(a) is a tolling statute that specifically provides for suspension of the limitations period to file nonbankruptcy claims.

1. Equitable Tolling

In the Eleventh Circuit, the equitable tolling doctrine most often applied is that enunciated by the Supreme Court in *Holmberg v. Armbricht*:

[W]here a plaintiff has been injured by fraud and “remains in ignorance of it without any fault or want of diligence or care on his part, the bar of the statute does not begin to run until the fraud is discovered, though there be no special circumstances or efforts on the part of the party committing

¹⁵ *Ibid.* See also *Artis v. District of Columbia*, 138 S. Ct. 594, 601-02 (2018) (Supreme Court employs “toll” and “suspend” interchangeably.)

¹⁶ *Artis*, 138 S. Ct. at 601-02.

the fraud to conceal it from the knowledge of the other party.”¹⁷

Equitable tolling is an extraordinary remedy “limited to rare and exceptional circumstances” and “typically applied sparingly.”¹⁸ It is well established that limitations periods are subject to equitable tolling, unless tolling would be “inconsistent with the text of the relevant statute.”¹⁹ Congress must be presumed to draft limitations periods in light of this background principle; this is doubly true when Congress enacts limitations periods to be applied by bankruptcy courts, which are courts of equity.²⁰

The fraud surrounding the Laboratory Program is pervasive. Under these facts, equitable tolling applies, as does the fraudulent concealment doctrine.

2. The Fraudulent Concealment Doctrine

The Supreme Court first applied the fraudulent concealment doctrine in the late 1800’s in *Bailey v. Glover*.²¹ Since then the fraudulent

¹⁷ *Holmberg v. Armbricht*, 327 U.S. 392, 397 (1946); *See also In re Int’l Admin. Servs., Inc.*, 408 F.3d 689, 701 (11th Cir. 2005).

¹⁸ *Hunter v. Ferrell*, 587 F.3d 1304, 1308 (11th Cir. 2009).

¹⁹ *Young v. United States*, 535 U.S. 43, 49 (2002).

²⁰ *Id.* at 49-50.

²¹ *Bailey v. Glover*, 88 U.S. 342 (1874).

concealment doctrine, which some courts refer to as the *Bailey* doctrine, has permeated federal law.²² Its purpose is “to prevent a defendant from concealing a fraud or committing a fraud which by its nature is concealed until such time as the party committing the fraud could plead the statute of limitations to protect it.”²³

Bankruptcy courts, as courts of equity, should be especially cognizant of the fraudulent concealment doctrine. One bankruptcy court beautifully articulated the fraudulent concealment doctrine in applying that doctrine to a Trustee’s RICO claims:

[W]hen there has been no negligence or laches on the part of a plaintiff in coming to the knowledge of the fraud which is the foundation of the suit, and when the fraud has been concealed, or is of such character as to conceal itself, the statute [of limitations] does not begin to run until the fraud is discovered by, or becomes known to, the party suing, or those in privity with him.²⁴

In *International Administrative Services*, the Eleventh Circuit affirmed a Florida bankruptcy court’s extension of time for a trustee or other estate representative to commence avoidance actions under the fraudulent concealment doctrine.²⁵ In so doing, the Court noted, “[w]hen

²² *In re Ahead by a Length, Inc.*, 100 B.R. 157, 163 (Bankr. S.D.N.Y. 1989).

²³ *Ibid.*

²⁴ *Ibid.*; *See also Bailey*, 88 U.S. at 349-50.

²⁵ *Int’l Admin. Servs.*, 408 F.3d at 710.

a defendant's fraudulent deceptions leave a plaintiff ignorant of the facts or even existence of his claim, the limitations period is tolled until discovery of the fraud Equity does not lend itself to fraud of any kind."²⁶

In the instant case, due to the nature of the fraud perpetrated on the Hospital and the continuing efforts by many to obfuscate the facts, the Liquidating Trustee has yet to ascertain all causes of action. It is thus unknown what state law causes of action may exist and what corresponding statutes of limitation may apply. The Liquidating Trustee has expended countless hours and substantial sums of money in a continued attempt to uncover the fraud that spanned the entire country, which is why the fraudulent concealment doctrine is directly applicable to this case. It would be inequitable to allow perpetrators of such an extensive fraud to escape liability solely because the Liquidating Trustee might be unable to file an action before a statutory limitation period expires, through no fault of his own.

²⁶ *Id.* at 701. *See also In re Levy*, 185 B.R. 378, 385-86 (Bankr. S.D. Fla. 1995).

It is entirely appropriate for this Court, as a court of equity, to apply equitable tolling and the fraudulent concealment doctrine, “to the end that fraud will not prevail, that substance will not give way to form, that technical considerations will not prevent substantial justice from being done.”²⁷

The limitations period for nonbankruptcy causes of action has been suspended and equitably tolled during this case due to the ongoing fraudulent concealment of the extent, nature and participants in the Laboratory Program. The time within which to bring such actions having not yet expired, the Liquidating Trustee’s request to bring nonbankruptcy causes of action through May 6, 2020 is due to be granted.

C. Authority exists to extend the 11 U.S.C. § 108(a) deadline for the Liquidating Trustee to commence adversary proceedings to pursue nonbankruptcy causes of action.

The Liquidating Trustee requests an extension of time under § 108(a) to bring nonbankruptcy causes of action as adversary proceedings, thus implicating Rules 7001, 7003 and 9006. At the hearing the Liquidating Trustee cited, and the Court considered caselaw on whether

²⁷ *Pepper v. Litton*, 308 U.S. 295, 305 (1939).

the law permits extending the deadline to file such claims.²⁸ Certain caselaw supports granting the Liquidating Trustee's request under the facts here.²⁹

In *In re International Administrative Services, Inc.*, the Eleventh Circuit ruled that a bankruptcy court had authority to extend time within which a trustee or estate representative could commence avoidance actions, despite the time limitations of Section 546(a).³⁰ In that case the Eleventh Circuit stated:

There is the threshold matter of whether the bankruptcy court had any authority—either by its own order or the doctrine of equitable tolling—to enlarge the § 546(a) period for commencing avoidance actions. The [d]efendants suggest that rather than a statute of limitations, § 546(a) operates as a jurisdictional bar, and point to Bankruptcy Rule 9006(b), which does not specifically provide for enlargement of time period created by statute, as opposed to those created by the Federal Rules of Bankruptcy Procedure or a court order. We find no merit in this argument.³¹

²⁸ Because the order entered as a result of the hearing includes an extension of the § 108(a) deadline, discussion of this issue is appropriate here even though a ruling is unnecessary.

²⁹ See *Int'l Admin. Servs.*, 408 F.3d 689 (11th Cir. 2005) and *In re Fundamental Long Term Care, Inc.*, 501 B.R. 784 (Bankr. M.D. Fla. 2013). See also *In re Nat'l. Envtl. Waste Corp.*, 200 F.3d 1266 (9th Cir. 2000), *amended by*, 98-55597, 2000 WL 1028785 (9th Cir. Jan. 18, 2000).

³⁰ *Int'l Admin. Servs.*, 408 F.3d at 710.

³¹ *Id.* at 699.

After reciting relevant portions of Rule 9006(b), the Court focused on specific language in the Rule: “by these rules . . . or by order of court.”³² It then held that although this language does not explicitly encompass statutory timeframes, it brings all Federal Rules of Bankruptcy Procedure, including Rule 7001, “under its umbrella.”³³

Two Florida bankruptcy courts have extended the time under Section 108(a) for a trustee to file nonbankruptcy causes of action. In *Providence Financial Investments, Inc.*, a case from the Southern District of Florida with facts similar to those at bar, the trustee was investigating a multi-jurisdictional Ponzi scheme perpetrated by several individuals, two of whom were the debtors; she sought to extend the time to file actions under Sections 108, 546 and 549, asserting that due to the nature and scope of the fraud she was unable to timely obtain copies of key documents necessary to complete the forensic accounting.³⁴ The trustee claimed that despite extensive efforts during the two-year limitation period under Sections 546 and 108, she was unable to piece

³² *Ibid.*

³³ *Ibid.*

³⁴ *In re Providence Fin. Invs., Inc.*, Case No.: 16-20516-AJC, Doc. 198, *Transcript of Hearing May 10, 2018* (Bankr. S.D. Fla. May 31, 2018). In addition to refusing to turn over documents, key witnesses and perpetrators were embroiled in several regulatory and criminal matters with the SEC and the Department of Justice.

together all causes of action the estate would have against various parties or complete the forensic accounting to determine the depth of the Ponzi scheme.³⁵ On this basis the bankruptcy court twice extended the limitations period under Rule 9006 for the trustee to commence actions under Sections 108, 546 and 549.³⁶

In *In re Fundamental Long Term Care*, the bankruptcy court for the Middle District of Florida extended the deadline to file §§ 546 and 108 actions under the authority of Rule 9006.³⁷ The same court later receded from its extension of the § 108 deadline, stating that in *Fundamental Long Term Care* it had considered the § 108 deadline only “in passing.”³⁸ Acknowledging the Eleventh Circuit’s ruling in *International Administrative Services* as the starting point, the court in *Health Support Network* concluded that “[a]bsent binding precedent, this Court declines the Trustee’s invitation to rewrite the plain language of

³⁵ *Ibid.*

³⁶ *Providence Fin. Invs.*, Case No.: 16-20516-AJC at Docs. 151, 192, 284 and 292. No creditor or party in interest in *Providence Financial Investments* objected to the trustee’s motions for extensions of time.

³⁷ *In re Fundamental Long Term Care, Inc.*, 501 B.R. 784 (Bankr. M.D. Fla. 2013).

³⁸ *In re Health Support Network, Inc.*, Case No. 8:15-bk-10966-MGW, 2018 WL 1621027, *2 (Bankr. M.D. Fla. Mar. 30, 2018).

Rule 9006 [T]his Court will not read *International Administrative Services* more broadly than its narrow holding.”³⁹

Judge Williamson’s reasoning and analysis in *Health Support Network* are sound, as is customary; his conclusion under the facts of that case is not surprising. But, the facts in *Health Support Network* are entirely distinguishable from those at bar. In *Health Support Network*, the debtor filed a Chapter 7 petition well before the limitations period on nonbankruptcy libel and defamation claims had expired.⁴⁰ The Chapter 7 trustee discovered the libel and defamation claims and the identity of the prospective defendants in ample time to bring an action on those claims.⁴¹ Nonetheless, only four (4) days before the § 108 deadline expired the trustee filed an emergency motion to extend the deadline.⁴² The target defendants vehemently objected.⁴³ Noting that § 546 avoidance actions must be brought by adversary proceeding in bankruptcy court,

³⁹ *Id.* at *3.

⁴⁰ *Id.* at *1.

⁴¹ *Ibid.* By operation of law, under Section 108, the Chapter 7 Trustee had an additional two years from the date of the petition to file an action. 11 U.S.C. § 108(a)(2) (2005).

⁴² *Health Support Network*, 2018 WL 1621027 at *1 (the Trustee, who was a successor trustee appointed about sixteen months post-petition, alleged that “cause” existed to extend the deadline because she no longer had enough time to send a pre-suit notice required for the defamation claim). *See Health Support Network*, Case No. 8:15-bk-10966-MGW at Doc. 234.

⁴³ *Health Support Network*, Case No. 8:15-bk-10966-MGW at Doc. 241.

but state law defamation claims may be brought in non-bankruptcy courts, Judge Williamson declined to extend the trustee's deadline to bring Section 108 claims, stating that the rationale in *International Administrative Services* "doesn't favor reading Rule 9006 to authorize the extension of the § 108 deadline."⁴⁴

Health Support Network involved no fraudulent concealment or basis for equitable tolling. In fact, the prospective defendants admitted that the trustee might have been entitled to an extension of time to bring nonbankruptcy claims governed by § 108 had such facts existed. Addressing *International Administrative Services* and *Fundamental Long Term Care*, the prospective defendants wrote:

But even if those cases did apply, the Trustee falls woefully short of alleging – let alone establishing – a factual basis to support her requested relief. Unlike in *Fundamental Long Term Care* and *International Administrative Services*, the Trustee has not alleged that she has been stymied in efforts to obtain pre-suit discovery from the Litigation Targets, as was the case in those cases. To the contrary, the Trustee's special counsel has been prosecuting similar claims against the Litigation Targets in State Court since February 12, 2016, and the Trustee has not sought (nor been stymied by

⁴⁴ *Health Support Network*, 2018 WL 1621027 at *3. ("Absent binding precedent, ... this Court will not read *International Administrative Services* more broadly than its narrow holding."). Because a similar action was already pending in state court, it appears obvious that the trustee in *Health Support Network* sought to file the defamation suit in state court. See *Health Support Network*, Case No. 8:15-bk-10966-MGW at Doc. 241.

responses to) any pre-suit discovery from the Litigation Targets in this case.⁴⁵

This is a distinction with a difference. *International Administrative Services* involved fraudulent concealment and bases for equitable tolling. There, the “stock trustee” appointed under a confirmed liquidating Chapter 11 plan discovered numerous transfers from the debtor to two other entities which then laundered the money through entities located all over the world.⁴⁶ The stock trustee’s ability to pursue fraudulent transfer actions and avoidance claims was hampered by the debtor’s principal and his associates: document production was delayed, discovery responses were withheld and records of the asset transfers were “lost” or “misplaced.”⁴⁷ After the bankruptcy court granted several motions to extend the limitation period the stock trustee filed an adversary proceeding against the transferee entities before the final extension expired.⁴⁸ During a three-day trial the stock trustee traced transfers all over the world. The bankruptcy court entered a money judgment against

⁴⁵ *Health Support Network*, Case No. 8:15-bk-10966-MGW at Doc. 241.

⁴⁶ *See Int’l Admin. Servs.*, 408 F.3d 689 (11th Cir. 2005) (The Court described the debtor as a “leviathan in the world of Ponzi schemes.”)

⁴⁷ It appeared to the bankruptcy court, that the transfer documents were not misplaced or lost but “deliberately and intentionally secreted” from the trustee. *Id.* at 696.

⁴⁸ *Id.* at 697.

the transferee entities who promptly, albeit unsuccessfully, appealed to the district court and then to the Eleventh Circuit, complaining, among other things, that the lower court erred in granting the extensions of time.⁴⁹

The facts that led to the extensions of time to file 546 and 108 actions in *International Administrative Services*, *Fundamental Long Term Care* and *Providence Financial Investments* were similar to the facts at bar. Just as the court in *Health Support Network* elected not to read *International Administrative Services* broadly to allow extending the § 108 deadline, this Court is disinclined to read *International Administrative Services* so narrowly as to preclude extending that deadline for filing adversary proceedings under the facts here. But that is an issue for another day.

⁴⁹ After agreeing that the bankruptcy court properly extended the limitation period “for cause” under Rule 9006(b), the Eleventh Circuit went a step further and found that the trustee met the higher standard to invoke equitable tolling. *Id.* at 700. The Eleventh Circuit recognized that the trustee acted with due diligence to discover the of the intricacies of the “asset diversion plan” between debtor and the transferee entities.

CONCLUSION

For the reasons stated on the record at the hearing and in the Amended Order (Doc. 1026), as supplemented by these findings of fact and conclusions of law, this constitutes the decision of this Court.

It is ORDERED:

1. The *Liquidating Trustee's Expedited Motion to Extend Deadline to File Adversary Proceedings* (Doc. 980) is GRANTED, *Nunc Pro Tunc* to April 17, 2019.
2. For cause shown, the time within which the Liquidating Trustee may file actions under 11 U.S.C. § 546 is extended through and including May 6, 2020.
3. The time within which the Liquidating Trustee may file adversary proceedings to pursue nonbankruptcy causes of action encompassed by 11 U.S.C. § 108(a) has been suspended, such that the Liquidating Trustee has through and including May 6, 2020 to file adversary proceedings to

pursue nonbankruptcy causes of action encompassed by 11

U.S.C. § 108(a).⁵⁰

DONE and ORDERED on August 22, 2019.



KAREN K. SPECIE

Chief U. S. Bankruptcy Judge

cc: all parties in interest

Counsel to the Liquidating Trustee is directed to serve copies of this Supplemental Order and the Amended Order dated May 13, 2019 (Doc. 1026) on interested parties and file proof of service within 3 days of the date of this Order.

⁵⁰ By the Motion, the Liquidating Trustee sought an extension of time through May 6, 2020. The Court grants this relief without prejudice to the Liquidating Trustee's right to request additional time if the facts so dictate.